



# Attorney General

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November 14, 1989

The Honorable William J. DeLong  
State Senator  
State Capitol - Senate Wing  
Phoenix, Arizona 85007

Re: I89-094 (R89-104)

Dear Senator DeLong:

You have asked whether the recently enacted amendment to A.R.S. § 42-271, Laws 1989 (1st Reg. Session) Ch. 202, § 1, exempts from property taxation artists' cooperatives and artists' partnerships which qualify for federal income tax exemption under the Internal Revenue Code of 1986, 26 U.S.C. § 501(c)(3).<sup>1/</sup> We conclude that it does not.

<sup>1/</sup>Section 501(c)(3) of the Internal Revenue Code provides that the following organizations are exempt from federal income taxation:

Corporations, and any community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes, or to foster national or international amateur sports competition (but only if no part of its activities involve the provision of athletic facilities or equipment), or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual, no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation (except as otherwise provided in subsection (h)), and which does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of (or in opposition to) any candidate for public office.

Article IX, § 2(6) of the Arizona Constitution provides:

All property in the State not exempt under the laws of the United States or under this Constitution or exempt by law under the provisions of this section shall be subject to taxation to be ascertained as provided by law.

Also, article IX, § 2(1) of the Arizona Constitution provides in pertinent part:

Property of educational, charitable and religious associations or institutions not used or held for profit may be exempt from taxation by law.

The phrases "by law" and "as provided by law" mean as provided by legislative enactment. See Collins v. Krucker, 56 Ariz. 6, 9, 104 P.2d 176, 177 (1940). Consequently, to be exempt from Arizona property tax, organizations not specifically exempt under the Arizona Constitution, such as the artists' cooperatives and partnerships referred to in your request, must be exempted by statute as educational, charitable or religious institutions. See State v. Yuma Irrigation District, 55 Ariz. 178, 181, 99 P.2d 704, 705 (1940). In this regard the Arizona Court of Appeals has held:

Exemption from taxation is the exception and not the rule in Arizona and the party claiming that property is not subject to taxation has the burden of showing some specific provision of law that unequivocally sustains the contention of non-taxability.

County of Maricopa v. North Central Development Co., 115 Ariz. 540, 542, 566 P.2d 688, 690 (App. 1977). Therefore, we must determine whether any state statutes unequivocally establish an exemption from taxation for artists' cooperatives and partnerships.

The statutory exemption that comes closest to this subject is A.R.S. § 42-271(A)(20), as added by Laws 1989 (1st Reg. Sess.) Ch. 202, § 1, which provides as follows:

A. All property in this state shall be subject to taxation, except:

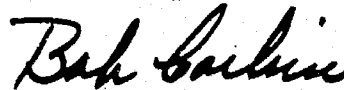
. . . . .

20. Property of musical, dramatic and dance groups, botanical gardens, museums and zoos, qualified as nonprofit charitable organizations under § 501(c)(3) of the United States Internal Revenue Code, as defined in § 43-104, as long as the property is used for those purposes and not used or held for profit.

No specific language in A.R.S. § 42-271, or elsewhere in Arizona statutes, exempts from taxation property of artists' cooperatives or partnerships which are exempt from federal income taxation under 26 U.S.C. § 501(c)(3). The exemption granted by A.R.S. § 42-271(A)(20) applies to the property of qualified performing arts organizations, such as musical dramatic and dance groups. It cannot be expanded to include all artists cooperatives or partnerships qualifying under § 501(c)(3). See State ex rel. Smith v. Bohannon, 101 Ariz. 520, 524, 421 P.2d 877, 881 (1966), appeal dismissed 389 U.S. 1 (1967) ("Courts will not read into a statute something which is not within the manifest intent of the legislature as gathered from the statute itself").

Statutes creating tax exemptions should be strictly construed since the presumption is against exemption, Kunes v. Samaritan Health Service, 121 Ariz. 413, 415, 590 P.2d 1359, 1361 (1979), and every ambiguity will be construed against it, Conrad v. County of Maricopa, 40 Ariz. 390, 393, 21 P.2d 613, 614 (1932). Accordingly, we conclude that Arizona law provides no property tax exemption for artists' cooperatives and partnerships which are exempt for federal income taxation purposes under 26 U.S.C. § 501(c)(3).

Sincerely,



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Attorney General

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